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In the Supreme Court of the United States

OCTOBER TERM, 1975

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

vs.

DIONISIJE MILIVOJEVICH, et al.,

Respondents.

BRIEF IN OPPOSITION

[redacted]

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INDEX

PAGE

Respondents' Appendix 2

Definition of Terms 2

Statement of the Case 4

Argument 8

I. There Is No Federal Question Presented By The Petition In This Property Case. This Court Should Not Disturb The Findings Of Fact Made By The Illinois Supreme Court 8

A) Did The Belgrade Church Have The Authority To Dissolve The American-Canadian Diocese And Take Its Property For Distribution Among Three New Religious Organizations? 9

B) Were The Proceedings Against Bishop Dionisije Carried Out In Accordance With The Constitution And The Penal Code Of The Serbian Orthodox Church? 9

C) Was There A Rescission Or Repudiation Of The Relationship Between The Belgrade Church And The American-Canadian Diocese? 11

II. Review By The Supreme Court Is Not Necessary To Resolve Alleged Conflicting Decisions .. 12

III. Plaintiff's "Hierarchical Blanket" Does Not Cover The Issues 12

A. The Religious Definition 13

B. The Legal Definition 14

Conclusion 19

PAGE

Conditional Cross-Petition of the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois Religious Corporation and Serbian Orthodox Monastery of St. Sava, An Illinois Not For Profit Corporation 20

Conclusion 24

Appendix A—Memorandum Opinion entered December 31, 1964 .....App. 1

Appendix B—Order entered December 31, 1964 ....App. 16

AUTHORITIES CITED

Cases

Bear v. Heasley, 98 Mich. 279, 57 N.W. 270 (1893) 21

Ferraria v. Vasconcelles, 23 Ill. 456 (1860) 21

Landrith v. Hudgins, 121 Tenn. 452, 120 S.W. 783 (1907) 21

Maryland and Virginia Eldership v. Church of God, 254 A. 2d 162 (1969) App. dis., 396 U.S. 367, 90 S. Ct. 499 (1970) 17

Mitchell v. Albanian Orthodox Diocese in Amer., Inc., 355 Mass. 278, 244 N.E. 2d 276 (1968) 21

Romanian Orthodox Missionary Episcopate of America v. Trutza, 205 F.2d 107 (C.A. 6th, 1953) 19

Smith v. Church of God, 327 F. Supp. 6 (1971) 18

Watson v. Jones, 80 U.S. (13 wall.) 679, 20 L.Ed. 666 (1872) 14, 22

Other Authorities

17 A., C.J.S., Contracts, Section 429 21

76 C.J.S., Religious Societies, Section 86, p. 874 23

52 ALR 3d 334 19

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a Religious Body, et al.,

Petitioners,

vs.

DIONISIJE MILIVOJEVICH, et al.,

Respondents.

BRIEF IN OPPOSITION AND CONDITIONAL CROSS PETITION FOR WRIT OF CERTIORARI OF BISHOP DIONISIJE MILIVOJEVICH; THE SERBIAN EASTERN ORTHODOX DIOCESE OF THE UNITED STATES OF AMERICA AND CANADA, AN ILLINOIS RELIGIOUS CORPORATION; AND SERBIAN ORTHODOX MONASTERY OF ST. SAVA, AN ILLINOIS NOT-FOR-PROFIT CORPORATION

TO: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

The Respondents, Bishop Dionisije Milivojevich, the American-Canadian Diocese, and the St. Sava Monastery Corporation, respectfully pray that the Petition for Writ of Certiorari to the Supreme Court of Illinois filed herein, be denied and, in the alternative, that if this Court sees fit to grant said Petition for a Writ of Certiorari, the Respondents' Conditional Cross Petition for Writ of Certiorari be granted as well.

RESPONDENTS' APPENDIX

The Appendix to the Petition for Writ of Certiorari fails to comply with Rule 23(1)i, in that the Appendix does not include all of the Opinions of Courts in this case.

Respondents append hereto as Appendix A, the Memorandum Opinion of the Honorable Philip W. Yager, rendered December 31, 1964, and as Appendix B, the Order entered by Judge Yager of the same date. This Opinion and Order were appealed and are the subject of the Opinion of the Second District Appellate Court of the State of Illinois, Justice Davis, appearing in Petitioner's Appendix as Appendix D (A. 60-80). References to our Appendix are indicated by the notation (Res. A. .....).

DEFINITION OF TERMS

HIERARCHICAL—is considered and defined herein at Page 12.

HOLY ASSEMBLY OF BISHOPS OF THE SERBIAN ORTHODOX CHURCH—All of the Bishops of the Serbian Orthodox Church gathered together in annual session. It has legislative and executive authorities as specified in Article 69 of the Constitution of the Church and is the constitutionally designated appellate court for any disciplinary proceedings against a bishop. (Abs. 1519)

HOLY SYNOD—An executive committee composed of the Patriarch and four Bishops whose duties are specified in Article 70 of the Constitution. It is the trial court for disciplinary proceedings against a Bishop. (Abs. 1522)

ORTHODOX CHURCH—A confederation of national churches which recognize a common doctrine as promulgated by certain church councils prior to the 10th Century. Each church (e.g. Greek, Russian, Serbian, etc.) is independent in its affairs from control by any other Orthodox Church. (Abs. 187; 364-7)

PATRIARCH—There are two different types of Patriarchs in the Orthodox Church:

A. Ecumenical Patriarch—The ecumenical patriarch is the spiritual leader of the Orthodox Church. He has no substantive legislative, administrative or judicial powers and is considered the "first among equals". (Abs. 366)

B. Serbian Orthodox Patriarch: A diocesan bishop elected by bishops, clergy, and laymen as titular head and presiding officer at church meetings; he is considered the "first among equals" with respect to the other bishops of the Serbian Orthodox Church.

SERBIAN ORTHODOX CHURCH—One of the fourteen Orthodox Churches with its See in Belgrade, Yugoslavia, hereinafter referred to, without disrespect, as Belgrade, the Belgrade Church or the Patriarchate.

SERBIAN ORTHODOX DIOCESE—There are two types of dioceses in the Serbian Orthodox Church:

A. Diocese in Yugoslavia: Dioceses located in Yugoslavia are governed exclusively by the Constitution of the Serbian Orthodox Church, must submit financial budgets to Belgrade, have no elected officers, all diocesan officials are appointed by the Bishop and their assets are subject to the direct control of the church headquarters in Belgrade.

B. The American-Canadian Diocese: The diocese has its own Constitution approved in 1928 by Belgrade, elects all of its officials from elected representatives of the affiliated congregations, submits no financial budgets to Belgrade, has complete and final authority to manage, convey and dispose of its assets in conformity with the Diocesan Constitution, and initiates all amendments to the Diocesan Constitution.

STATEMENT OF THE CASE

This litigation concerns the control of extensive property interests of the American-Canadian Diocese of the Serbian Orthodox Church. There are no issues of faith or morals, dogma or religious principles involved. All Courts which have heretofore examined this controversy, including voluminous evidentiary material, have agreed that the Belgrade Church is not empowered under the Church Constitution to break up the American-Canadian Diocese into thirds. Belgrade has sought to accomplish this by defrocking the Bishop; the Respondent Bishop Dionisije. The very narrow issue which comes before the Court is not the power of the Church to remove the Bishop, but whether in so doing, the Bishop, under the Church Constitution and Penal Code, was accorded rudimentary due process. The Illinois Supreme Court on examination of the evidence, held that he was not and hence remanded the case.

The Serbian Eastern Orthodox Diocese for the United States of America and Canada owns three large religious-cultural centers throughout the United States. Over 1,200 acres in Pennsylvania, 200 acres in Libertyville, Illinois, and approximately 100 acres in Jackson, California are used for Summer camps, picnic grounds, church buildings and worship, cemeteries, and in the case of the Shadeland property, an old folks home. The Libertyville property, when initially acquired, was under 30 acres. In 1950 the Pennsylvania property was acquired. The Jackson property was acquired in 1962, and substantial improvements were made several years thereafter. Since 1963 the Respondents have expended over $700,000.00 in developing and improving the properties. (Abs. 770-1)

The American-Canadian Diocese is like no other diocese connected with the Serbian Orthodox Church. It had an

independent existence in America and a religious affiliation with the Russian Orthodox Church before the Serbian Orthodox Church of Belgrade, Yugoslavia was re-organized after the First World War in its modern form. It is the only diocese that has its own Constitution and Belgrade has frequently acknowledged its uniqueness, administrative freedom, independence in the use of its property, and its right to govern its activities subject to the laws of the United States and Canada and the Diocesan Constitution. The Diocese has, since 1921, maintained a religious relationship with the Belgrade Church.

Governed by a Church National Assembly (Sabor) composed of elected representatives and clergy from the Serbian Orthodox congregations of the United States and Canada, the Diocese has grown and prospered without interference or assistance from Belgrade. The Respondents, representing the majority of the congregations and faithful of the United States of America and Canada, have been in control and possession of the property since its acquisition. The Diocesan property has been available and used by all Orthodox Serbian laymen who wish to use it, notwithstanding the litigation or the side that they support in this unhappy controversy. (Abs. 767, 770)

In May, 1963 Belgrade, acting under its alleged legislative and administrative authority, amended its Constitution and removed the American Diocese, substituting in its place three new dioceses, the Eastern, Mid-West and Western. At the same time, acting under its Penal-Judicial authority, it purported to suspend Bishop Dionisije and transfer him to the Mid-West Diocese pending inquiry into possible Penal Proceedings against him. Firmilian was appointed as his temporary administrator. Whether he had been appointed temporary administrator of the American-Canadian Diocese or of the Mid-West Diocese,

to which he was later elected Bishop, was the subject of much conflicting evidence.

It is the sworn obligation and duty of Petitioner Firmilian, who purports to be the Administrator of the American-Canadian Diocese (in the place of Bishop Dionisije), to dissolve the Diocese, distribute the assets and enforce Belgrade's decision to fund the three new dioceses. (Abs. 204; 722-5, 187; 225) Those laymen, congregations or clergymen who did not recognize this disposition have been punished by Bishop Firmilian and expelled from the use of the diocesan property and from the Serbian Orthodox Church. (Abs. 356; 726-7; 734)

The Church National Assembly of the Diocese rejected the dissolution and division of the Diocesan property. The Constitutions of the Belgrade Church and the Diocese contain specific provisions prohibiting Belgrade from dividing the American-Canadian Diocese and distributing its property to three new organizations without its consent. All the Courts which have considered this case agree on this.

Belgrade now seeks through the alleged suspension and Penal Proceedings against Bishop Dionisije to install Firmilian as the temporary administrator of the American-Canadian Diocese, expel all congregations, officers and clergy who do not agree with the division decision, substitute his faction, and carry out the division and distribution of the assets.

At the request of Bishop Firmilian for a "rush trial against Bishop Dionisije" (Abs. 1198), the Belgrade Church trampled and ignored the provisions of its Penal Code and its Constitution governing the disciplining of

clerics in order to promptly depose him from the Mid-West Diocese and later defrock him from his ecclesiastical position. In this manner, Firmilian and Belgrade attempted to remove the Bishop's opposition to this property grab.

The Belgrade Church perverted its penal-judicial authority to accomplish a result which it could not accomplish under its legislative or administrative authority.

As a result of its own acts and the amendment of its Constitution, the Serbian Orthodox Church has removed the American-Canadian Diocese from the list of dioceses in its Constitution. The Serbian Orthodox Church no longer recognizes the existence of the American-Canadian Diocese, although the majority of local congregations have continued to support and adhere to the Diocese.

Belgrade operates three new dioceses in America and Canada, each with its own Bishop, property and congregations. The American-Canadian Diocese has continued to operate with its Bishops, property and congregations as it did prior to 1963.

ARGUMENT

I.

THERE IS NO FEDERAL QUESTION PRESENTED BY THE PETITION IN THIS PROPERTY CASE. THIS COURT SHOULD NOT DISTURB THE FINDINGS OF FACT MADE BY THE ILLINOIS SUPREME COURT.

The narrow factual issues decided by the Illinois Supreme Court do not raise a constitutional question. Nor does the judgment of that Court, remanding for further proceedings, merit review here. This case essentially is one involving disputed factual questions concerning construction of associational documents and procedural rights to be accorded in a judicatory proceeding. Questions of faith are not involved. The controlling case law has been relied upon by both sides and cited by the Courts which decided the case. (*Gonzales, Watson, Hull, Sharpsburg, Kedroff*, and *Kreshik*.)

The factual evidence in this case was presented over a period of 18 months in a segmented trial consuming in excess of 100 days.

Over 600 exhibits and 12,000 pages of transcript were generated in the presentation of the evidence on the disputed fact questions. All four Courts which have rendered an opinion on this case have found that this is a church property dispute. There is no Federal Statute, regulation, act, or Federal Constitutional question presented.

The narrow issue decided by the Illinois Supreme Court was whether the decision of the Trial Court was contrary to the manifest weight of the evidence.

The issues presented below were:

A) DID THE BELGRADE CHURCH HAVE THE AUTHORITY TO DISSOLVE THE AMERICAN-CANADIAN DIOCESE AND TAKE ITS PROPERTY FOR DISTRIBUTION AMONG THREE NEW RELIGIOUS ORGANIZATIONS?

All four of the Judges and Courts which have ruled upon this issue have unanimously agreed that the Belgrade Church had no right to dissolve the American-Canadian Diocese and distribute its property and assets among the three Belgrade-created new dioceses:

1) Judge Yager—(Res. A., Pg. 13)
2) Justice Davis—(Pet. App., Pg. 77)
3) Judge Carey—(Pet. App., Pg. 58)
4) Justice Kluczynski—(Pet. App., Pg. 32)

These Courts based their decisions upon the plain language of provisions in the Constitution of the American-Canadian Diocese and the Constitution of the Serbian Orthodox Church. None of these provisions concern any spiritual, religious, hierarchical, or dogmatic questions. They are concerned with the legislative and administrative relationship of the entities.

B) WERE THE PROCEEDINGS AGAINST BISHOP DIONISIJE CARRIED OUT IN ACCORDANCE WITH THE CONSTITUTION AND THE PENAL CODE OF THE SERBIAN ORTHODOX CHURCH?

At the trial of this case, as the Illinois Supreme Court observed, ". . . testimony was presented as to the correctness of the proceedings against Bishop Dionisije under the Constitution and the Penal Code of the Serbian Orthodox Church . . ." (Abs. 16) ". . . the Trial Court did not base its decision on the alleged personal transgressions of Bishop Dionisije . . ." (Abs. 24)

Contrary to the contentions of the Petitioners that the Court weighed the evidence of the guilt or innocence of Bishop Dionisije, the Court reversed the Trial Court's finding of fact because:

> "A detailed review of the evidence discloses that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the Constitution and the Penal Code of the Serbian Orthodox Church . . . Accordingly the Trial Court's finding that Bishop Dionisije's removal and defrockment were not the result of arbitrariness, must be set aside as contrary to the manifest weight of the evidence . . . Moreover, because Bishop Dionisije's removal and defrockment were in violation of church procedure, consideration of the remaining charges need not be undertaken." (Abs. 27)

The Supreme Court did not weigh the evidence against Bishop Dionisije; the Court limited itself to the "narrowest kind of review", that of enforcing the rights of members in an association, temporal or religious, according to the laws of that association. (A. 27)

Although the Penal Code and Constitution of the Serbian Orthodox Church, two separate documents, mandated clearly defined offenses, rights, and procedural steps in disciplinary matters against any cleric, the testimony of the participants in the proceedings, the records brought to the Trial Court from the Archives in Belgrade and the documents used in connection with the proceedings established that the rules had been violated in at least the following respects:

1) Bishop Dionisije was punished before he was advised of the charges against him.
2) He was denied copies of the complaints and an opportunity to confront his accusers.

3) He was afforded no opportunity to rebut charges by presenting witnesses in his defense.
4) He was twice convicted on accusations of which he was never apprised.
5) The investigating commission which recommended trial and deposition had not read the accusations against him.
6) Although the Holy Synod was the court with proper jurisdiction, he was not tried by the Holy Synod.
7) He was tried by the Holy Assembly of Bishops which did not have jurisdiction to try him.
8) He was denied the right of Appeal guaranteed to him by both the Constitution and Penal Code.
9) Persons who were disqualified by the clear provisions of the Penal Code participated in the deliberations and "voted" on his guilt.
10) He was denied adequate time and information necessary to make a defense.
11) He was presented with an indictment which omitted the names of alleged accusers, "victims" and witnesses, as well as the times, places and other information necessary to answer.
12) He was charged with offenses upon which the Penal Code Statute of Limitations had expired.

C) WAS THERE A RESCISSION OR REPUDIATION OF THE RELATIONSHIP BETWEEN THE BELGRADE CHURCH AND THE AMERICAN-CANADIAN DIOCESE?

The Illinois Supreme Court ruled against the Respondents' position on this point. It is the subject of Respondents' Conditional Cross Petition, *infra*, pp. 20-23.

II.

REVIEW BY THE SUPREME COURT IS NOT NECESSARY TO RESOLVE ALLEGED CONFLICTING DECISIONS.

None of the local congregation cases referred to in the Petition litigated the issues of the division of the Diocese, the proceedings against Bishop Dionisije, or the mutual rescission question.

The references at Pages 27-28 of the Petition, to ten cases involving this dispute decided by other courts is inaccurate. In five of those cases (*Drajelivich, Radakovich, Ellesin, Holy Resurrection,* and *Keleman*) the Courts ruled against plaintiff's legal position, finding that each local church was "congregational" and the majority of the congregation had the right to control the church affiliations and property. The *Ralich* opinion was disapproved several years later by the same court in *Keleman.*

As there are no diocesan property rights in the property of the local congregations, those decisions have no effect upon the issues before the Court.

This is the only case in which the Diocesan Corporation, Bishop Dionisije, the three Administrators, and the three new Dioceses were parties.

The Illinois Supreme Court has decided the controversy and there are no other Federal or State decisions in contradiction.

III.

PLAINTIFF'S "HIERARCHICAL BLANKET" DOES NOT COVER THE ISSUES.

Petitioners attempt to throw a "Hierarchical Blanket" over all of the acts of Belgrade in order to justify the illegal and unconstitutional acts of their principals. Their

basic unsound premise is that if there is any sort of "hierarchical" relationship existent, the courts have no jurisdiction other than to enforce the hierarchical decision without regard to the real relationship of the parties.

This word of art has both a legal and a religious definition.

A. The Religious Definition:

The word "hierarchical" was defined by Petitioner's ecclesiastical expert, Father Meyendorff, in this testimony:

> ". . . it's difficult to define what a hierarchical church is, but I think that this is the closest definition to that we can get. That the office of the bishop is a divinely-established office. It is not something which comes from man, it's something which comes from God. And its functions therefore, its responsibilities for—to its other bishops—that means essentially unity and fellowship with them, and second to the flock, are both divinely established." (Abs. 370).

The Secretary of the Holy Synod, Father Mladenovich, on direct examination by the Petitioners, testified that the Serbian Eastern Orthodox Church is hierarchical because it has three ranks of clergy: bishops, priests and deacons. (Abs. 141). Bishop Visarion, testifying for Petitioners, defined hierarchy in terms of the three positions of honor (bishop, priest and deacon) among the clergy of the church. (Abs. 221).

Father Meyendorff, Petitioners' witness, stated that among the orthodox autocephalous churches (e.g. Russian Orthodox, Serbian Orthodox, Greek Orthodox) there is a "hierarchical authority." (Abs. 366). Father Meyendorff explained that the "hierarchical authority" refers to the position of the Patriarch of Constantinople who has the "primacy of honor" among the patriarchs of the orthodox church. However, this "hierarchical author-

ity" has no power "over the internal affairs of the churches." (Abs. 366 [Note: mistake in Abstract where "eternal" appears instead of "internal."]).

Bishop Irinej agreed with Father Meyendorff, Father Mladenovich, and Bishop Visarion that hierarchy refers to the levels of clergy and the spiritual and dogmatic things of the church which cannot be changed. He also noted that the hierarchical structure of the church relates to spiritual and dogmatic things as opposed to the external affairs connected with administration and the physical existence of the church in the world. (Abs. 747-8)

B) The Legal Definition:

The legal definition of "hierarchical" is set forth in *Watson* v. *Jones,* 13 Wall. 679, 722 (1871) in these terms:

> "Where the ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of the general organization."

It is obvious that Father Meyendorff and the United States Supreme Court do not mean the same thing when they refer to a hierarchical relationship.

All of the Courts which have considered this case have agreed that the American-Canadian Diocese-Patriarchate relationship is not a strict *Watson* v. *Jones* situation. The History of the Diocese, its Constitution, the Constitution of the Patriarchate and the admissions of the Patriarchate confirm and establish this autonomy.

The American-Canadian Diocese had independent existence and status before the Serbian Patriarchate was formed after World War I. (Abs. 380). It maintained religious-hierarchical relationships with the Russian Orthodox Church before World War I but the Church National Sabor ruled "autonomously." (Abs. 1015). The Russian Orthodox Church commissioned Father Mardary ". . . for the purpose of organizing an independent Serbian Diocese . . ." (Abs. 1032).

In 1928 the Assembly and Synod acknowledged "the autonomous organization" and "autonomous administration" of the American-Canadian Diocese at the time that the diocesan constitution was accepted, approved and reprinted (DX 51, Abs. 1057-62). The Holy Synod stated that the diocese was to operate with "the widest possible autonomy" in a country "where the freedom of its citizens is so great and known." (Abs. 1060).

In 1945 the Belgrade bishops rendered a Decision in response to a complaint by the Communist government against Bishop Dionisije stating:

> "Furthermore, the American Serbian Orthodox Diocese, which is in organic ties with the Serbian Patriarchate, has its separate constitution by which in reference to its external independent activities is responsible and governed only according to the laws of the United States of America." Citing Article 8 of the diocesan constitution. (DX 220, Abs. 1239-40).

At the October 3, 1963 meeting of the Synod a resolution passed saying:

> "1. That all the rights of the former American-Canadian Diocese as they relate to the autonomy, in the administrative sense, remain unchanged. The only exception is the forming of three dioceses and
>
> "2. That the constitution of the former American-Canadian Diocese remains the same and that the dioceses in America and Canada will not, in an administrative sense, the management (or *direction* of the properties) be managed (or *directed*) in the same manner as those in Yugoslavia." (PX 128, Abs. 1692).

The relationship between the Patriarchate, the American-Canadian Diocese and the local congregations is not a *Watson* v. *Jones* hierarchical relationship:

1. It is the only Serbian Orthodox diocese with its own constitution. (Abs. 749-50; A. 225)

2. The Serbian Orthodox Church has no right, title or interest in any of the diocesan assets. (Abs. 1489).

3. The American-Canadian Diocese has no right, title or interest in any of the assets of the member congregations. (Abs. 1489).

4. The diocese is controlled by its constitutional Church National Assembly (Sabor) composed of clergy and laymen elected by member congregations. (Abs. 1451-2).

5. The Diocesan Council, the chief executive body, is elected by the Church National Assembly. (Abs. 1452).

6. The diocese has complete and final authority to manage, convey and dispose of its assets in conformity with the diocesan constitution. (Abs. 1451-2).

7. The Diocesan Assembly initiates and approves amendments to the diocesan constitution, subject only to the approval of Belgrade. (Abs. 1452).

8. Dioceses and congregations in Yugoslavia are required to submit financial budgets to the Patriarchate for approval. (Abs. 1585). Neither the American-Canadian Diocese nor its congregations are subject to such control.

9. The membership of the American-Canadian Diocese support it by voluntary contributions and morally obligatory assessment. (Abs. 1492).

10. The local congregations of the American-Canadian Diocese elect their priest by majority vote of the congregation. (Abs. 1482). The priests of the Yugoslavian con-

gregations are appointed by the diocesan bishop. (Abs. 1557).

11. Voting members of the local congregations composing the American-Canadian Diocese are elected to membership by the voting members of the local congregation and must pay dues to maintain those rights. (Abs. 1469) No such practice exists in Yugoslavia. (Abs. 749).

12. There are Serbian Orthodox congregations existent in the United States which are not members of the American-Canadian Diocese or the Belgrade church and are independent of both. (Abs. 781; 381-2).

The administrative structure of the American-Canadian Diocese gives total self government to the local congregations with respect to their property and complete autonomy to the Church National Assembly with respect to the property of the diocese. There is no provision in either constitution requiring the consent of any general Serbian Church authorities in Belgrade with respect to the management or use of property in the United States and Canada.

The real relationship between the local church and the Hierarchical Eldership was examined by the Supreme Court of Maryland in *Maryland and Virginia Eldership* v. *Church of God,* 254 A. 2d 162 (1969) App. dis., 396 U.S. 367, 90 S. Ct. 499 (1970). The local congregations which had separated from the Eldership and refused to accept ministers appointed by the Eldership won the case. The hierarchy's appeal to the Supreme Court was dismissed with the finding that the Maryland Court of Appeals followed neutral principles of law in making the decision. In the Maryland case the appellants contended that the property rights of a local church follow "as an incident from ecclesiastical determinations of the identity of clergymen entitled to use church property pursuant to the Elder-

ship's itinerant plan" and that "without effective discipline and control over the clergy there would not long be purity of doctrines according to denominational standards in any event." (P. 170).

These arguments, identical to the arguments of the Petitioners, are answered by the Maryland Supreme Court:

> "We do not understand that the decision in *Hull* requires the State equity courts to provide effective discipline in control of a denomination over its clergy or to maintain that denomination's 'purity of doctrine.' As we see it, this would be 'establishment of religion' with a vengeance, and under neither the Maryland law nor under the prohibitions of the First Amendment are we permitted to do this. We have no right to prevent the local congregations from separating from the Eldership and from refusing to accept the ministers appointed by the Eldership. To do this would deny to the members of the local congregation their freedom of religion and would in effect put the judicial power of the state behind the enforcement of the doctrine and discipline of the Eldership thus, in effect, 'establishing' the religion promulgated by the Eldership. This we are forbidden to do.
>
> "Nor, in our opinion, does the local property follow 'as an incident' of the power of the Eldership to appoint clergymen for a local congregation. . . ." (P. 170).

The Maryland decision is based upon an analysis of the church constitutions, the religious corporation law and the deeds to the property—neutral principles of law. Yet, once again, the hierarchy lost.

In 1971 the United States District Court in Maryland found against the hierarchy. *Smith* v. *Church of God,* 327 F. Supp. 6 (1971). The court disposed of petitioner's argument in this manner:

> "Whether or not the structure of the denomination in this case is 'hierarchical' in its policy with respect to some matters is irrelevant. The central point is that, with respect to the use and control of local church property, neither the constitution of the general eldership, nor the corporate deeds or other agreements between the eldership and the local churches involved in this case, provided for the reverter of church property upon local church withdrawal." (P. 13).

The hierarchy lost the *Hull* case upon remand to the Georgia Supreme Court. The United States Supreme Court denied certiorari. 167 SE 2d 658 (1969) cert. denied 396 U.S. 1041, 90 S. Ct. 680.

The commentator of the annotation at 52 ALR 3d 334 concludes from the relevant cases:

> "Although both the Roman Catholic and the Eastern Orthodox Churches are, in their general ecclesiastical structure, hierarchically organized, only the Roman Catholic Church has consistently been held to have control of local church property in disputes with local congregations. Cases involving Serbian Orthodox or other orthodox churches have reached varying results, depending upon the particular circumstances presented."

In *Romanian Orthodox Missionary Episcopate of America* v. *Trutza,* 205 F.2d 107 (C.A. 6th, 1953) the Court of Appeals recognized the right of the "Heirarchical" American Romanian Orthodox Diocese to dis-affiliate from the "Hierarchical" Romanian Orthodox Patriarchate.

CONCLUSION

The Respondents respectfully pray that the Court deny the Petition for Writ of Certiorari to the Illinois Supreme Court.

CONDITIONAL CROSS-PETITION OF THE SERBIAN EASTERN ORTHODOX DIOCESE OF THE UNITED STATES OF AMERICA AND CANADA, AN ILLINOIS RELIGIOUS CORPORATION AND SERBIAN ORTHODOX MONASTERY OF ST. SAVA, AN ILLINOIS NOT FOR PROFIT CORPORATION.

As we have stated above, we believe that the Petition for *Certiorari* should be denied. In the event the Petition is granted, however, the respondent Diocese asks that the Court also grant this Cross-Petition on its part to review that aspect of the decision of the Supreme Court of Illinois which, in the view of the Diocese, denies it equal protection of the laws.

Specifically, we believe the Supreme Court of Illinois has held that the Diocese has no right to the protection of the civil law in matters of property or contract where the Belgrade Church is involved. The decision of the Court did not, of course, state this is express terms, but we think that is what the following language means:

> "Reviewing the history of the Diocese, as disclosed by the record and the constitutions of the respective parties, we find that the relationship is more than a mere contract or compact. Rather, it is a relationship of religious unanimity wherein people of common faith joined with a recognized higher church organization to further the practice of their faith. The constitutions of the parties are simply the expressions of the temporal laws governing this religious union and are only a minor aspect of it. Actions which are contrary to these temporal laws are not a repudiation or an abrogation of the primary and basic relationship of religious unity." (A. 33)

It is obvious enough that the total relationship between the parties is indeed more than a "mere contract or compact," since the relationship includes their common religious faith. But whatever the relationship between the parties may be in ecclesiastical terms, it is, in terms of the civil law, contractual. It is based upon a mutual, express agreement to respect each others' rights as set forth in the respective constitutions. In *Ferraria* v. *Vasconcelles,* 23 Ill. 456, 460 (1860), the Illinois Court recognized that the constitutional relationship between a Presbyterian church and its Presbytery is one in which ". . . organized bodies have entered into a compact or agreement . . ." Similarly, the constitution of an individual church is considered to be a contract among the members. See *Bear* v. *Heasley,* 98 Mich. 279, 57 N.W. 270, 280 (1893) ("The relations between the members of this association is one of contract, and the confession of faith and constitution constitutes the terms of the agreement, which is binding upon all."); *Landrith* v. *Hudgins,* 121 Tenn. 452, 120 S.W. 783, 792, 806 (1907); See also *Mitchell* v. *Albanian Orthodox Diocese in Amer., Inc.,* 355 Mass. 278, 244 N.E. 2d 276, 279 (1968) (by-laws of diocese, a religious corporation, held ". . . a contract between the members and the Diocese.").

Each of the courts which has considered this matter has held that Belgrade violated the rights of the Diocese when it attempted to dissolve the Diocese and distribute its assets among three newly created dioceses. We believe that this action by Belgrade was a violation of the basic compact between the parties which, in terms of the civil law, amounted to a material breach of contract. Ordinarily, a material breach by one party will entitle the other party to rescind. See *e.g.,* 17 A., C.J.S., Contracts, Section 429:

> "An outright refusal of one party to a contract to perform the contract or its essentials constitutes such a repudiation as to entitle the other party to treat

the contract as rescinded. Where one party abandons or disavows the contract and makes a demand based upon new terms not a part of the contract, the other party may rescind the contract.

• • •

The test in determining whether there has been a repudiation of a contract by one of the parties so as to warrant the other in rescinding is whether the acts and conduct of the party evince an intention no longer to be bound."

It hardly needs argument to demonstrate that, in amending defendant out of its constitution and dispatching emissaries to oversee defendant's dissolution and the transfer of its assets to new dioceses, Belgrade was "evincing an intention no longer to be bound" by the basic compact between the parties.

Did the Diocese have any legal remedy for this breach by Belgrade? To say that it did not would be to say that religious corporations have no contract or property rights under the civil law. This, of course, is not the case. As this Court observed, in what is perhaps the most frequently cited case in this area of the law, *Watson* v. *Jones,* 80 U.S. (13 wall.) 679, 20 L.Ed. 666, 670 (1872):

"Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, and of the extent to which it has agitated the intelligent and pious body of Christians in whose bosom it originated, we enter upon its consideration with the satisfaction of knowing that the principles on which we

are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us."

See also 76 C.J.S., Religious Societies, Section 86, p. 874:

"While the civil courts have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies, they do have jurisdiction as to civil, contract, and property rights even though such rights are involved in, or arise from, a church controversy."

The Illinois Supreme Court has held that, insofar as its relationship with Belgrade is concerned, the Diocese has no contract rights and no access to the civil courts for the redress of wrongs which clearly constitute fundamental breaches of contract. We believe, therefore, that the decision of the Illinois Supreme Court deprives the Diocese of equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

The Respondents respectfully pray that this Court deny the Petition for Writ of Certiorari to the Supreme Court of Illinois, or in the alternative, in the event that the Court sees fit to grant the Petition for Writ of Certiorari, to grant Respondents' Conditional Cross-Petition.

Respectfully submitted,

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